MORTON J. POSNER
ATTORNEY-AT-LAW

SWIDLER
&
BERLIN
CHARTERED

ORIGINAL

DIRECT DIAL
(202)424-7657

May 30, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket 96-98)

Dear Mr. Caton:

Transmitted herewith on behalf of GST Telecom, Inc., are an original and twelve (12) copies of its Reply Comments in the above-captioned proceeding.

Also enclosed is an extra copy of this letter and Reply Comments. Please date-stamp the extra copy and return it to me in the envelope provided.

If there are any questions concerning this matter, please contact me.

Very truly yours,

Morton J. Posner

Enclosures

cc (w/o encl.): Andrew D. Lipman, Esq.

cc (w/encl.): Janice Myles (4 copies and 1 diskette by hand)
ITS (1 copy by hand)
Ken Snow

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3000 K STREET, N.W. ■ SUITE 300
WASHINGTON, D.C. 20007-5116
(202)424-7500 ■ FACSIMILE (202)424-7643

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	

REPLY COMMENTS OF GST TELECOM, INC.

Eric J. Branfman
Morton J. Posner
SWIDLER & BERLIN, Chtd.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Tel.)
(202) 424-7645 (Fax)
Attorneys for GST Telecom, Inc.

Kenneth E. Snow
Director, Regulatory Affairs
GST Telecom, Inc.
3478 Buskirk Avenue
Pleasant Hill, CA 94523

Dated: May 30, 1996

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SUMMARY

GST Telecom, Inc. ("GST"), a competitive access provider using state-of-the-art fiber optic transmission networks, urges the Commission to adopt minimum federal regulatory standards for compliance with the obligations of the Telecommunications Act of 1996 ("1996 Act"). Without minimum federal standards for interconnection, access to unbundled elements, collocation and other requirements, incumbent local exchange carriers may use individual state standards to delay new carrier entry into the local market. The Commission also should adopt long run incremental cost-based pricing standards to ensure local competition is economically viable for new entrants. Finally, bill and keep should be mandated on an interim basis where parties cannot agree on a symmetrical reciprocal compensation rate.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98

REPLY COMMENTS OF GST TELECOM, INC.

GST Telecom, Inc. ("GST"), by its undersigned attorneys, hereby submits its Reply Comments in Phase I of the above-captioned proceeding. GST urges the Commission to adopt minimum federal regulatory standards for compliance with the obligations of Section 251 Communications Act, as amended by the Telecommunications Act of 1996 ("1996 Act"). Without minimum standards, incumbent local exchange carriers ("ILECs") will have no incentive to reach rapid interconnection and unbundling agreements. Further, they may now exploit a patchwork of State standards to delay new entrants into the local marketplace, thus denying the full economic benefit of competition to the public. The Commission should also adopt long run incremental cost ("LRIC") based pricing for interconnection, access to unbundled elements, and collocation. This pricing method is efficient, convenient, authorized by the 1996 Act, and constitutional. Opponents of LRIC-based pricing can offer no better alternative. Until LRIC-based pricing is implemented, bill and keep is the appropriate and statutorily authorized cost recovery structure.

I. MINIMUM FEDERAL REGULATORY STANDARDS FOR COMPLIANCE WITH SEC. 251 ARE ESSENTIAL TO IMPLEMENTATION OF THE 1996 ACT (¶¶ 25-51, 67-68, 77-80, 117-120)

Unsurprisingly, the ILECs, who stand to gain from any delay and uncertainty in resolving the specific scope of their obligations under Sec. 251, argue that most substantive interconnection issues should be left to individual negotiations and state arbitration proceedings. Some of the State commissions also express concern that their jurisdiction and authority would be circumscribed by overly detailed federal rules. Nonetheless, several State regulators express support for federal rules that would provide guidance to the States or establish minimum standards for compliance with the 1996 Act, as long as the rules did not restrict the States' ability to exercise those functions committed to them by the statute.[1/] GST argues in its initial comments that a minimum federal regulatory baseline is essential to implementing the 1996 Act. Such minimal rules would enable competitive LECs rapidly to provide service without immediately being mired in dilatory arbitration over every detail of interconnection. GST holds steadfast to the proposition that meaningful interconnection will not occur without minimum standards in interconnection and unbundling.

A. Minimum Standards Will Facilitate Voluntary Negotiations

Many ILECs argue that the Commission should not seek to prescribe particular forms of interconnection or unbundled access by regulation, but should instead allow carriers to determine these matters by negotiation. BellSouth takes this position to its most ridiculous extreme—on nearly every issue posed in the Notice of Proposed Rulemaking ("*NPRM*"), BellSouth's response in

[1/] *See* Massachusetts Dep't of Public Utilities ("DPU") at 5; Michigan Public Service Commission ("PSC") at 4; Public Utility Commission ("PUC") of Texas at 4.

essence is that the Commission should do nothing in order to avoid interfering with private negotiations.[2] There are several glaring flaws in this argument.

First, Sec. 252(a)(1) expressly provides that an ILEC "may negotiate and enter into a binding agreement with the requesting telecommunications carrier . . . *without regard to the standards set forth in subsections (b) and (c) of section 251.*" (Emphasis added.) Commission rules providing substantive interpretation of the Sec. 251(b) and (c) duties, therefore, would be inapplicable as a matter of law to negotiated agreements. Contrary to the ILECs' implication, Commission rules would in no way limit the range of negotiation options available either to ILECs or to requesting carriers.

Second, the Act recognizes that voluntary negotiations may be unsuccessful, and provides for binding arbitration in which the standards of Sec. 251(b) and (c) *do* apply. Federal rules establishing the scope of these standards would be invaluable in assisting the State commissions in performing their arbitration duties. As AT&T points out in its comments, "Uncoordinated price arbitrations in each of the 50 states—hindered by the same ILEC efforts to thwart competition that led Congress to impose federal standards—would yield a patchwork of differing and unpredictable pricing outcomes that would render effective voluntary solutions all but impossible."[3] The same is true of arbitration of issues other than price. If the Commission were to abstain from regulation

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2/ *See, e.g.,* BellSouth at 13, 20, 23 (interconnection), 24-25 (collocation), 28-29 (unbundling), 30-31 (definition of network elements), 38 (local loop specifications), 48 (pricing standards), 58 (rate structures).

3/ AT&T at 45-46.

in order to facilitate the negotiation process, it would also have to abdicate its statutory responsibility to guide the arbitration process.

Third, as GST and others argues in initial comments, minimum standards will in fact improve, not interfere with, the prospects for successful voluntary negotiation. For example, the Department of Justice said:

> We share the Commission's view that its articulation of pricing principles and/or parameters would lower barriers to entry by increasing the predictability of rates and thereby facilitate negotiation, arbitration and review of agreements between ILECs and new entrants.[4/]

The fact that Congress had to pass a law *requiring* the ILECs to engage in good-faith negotiations, Sec. 251(c)(1), is strong evidence of the need for regulatory guidance. Without the legal compulsion of the Act and the threat of binding arbitration, ILECs would have little, if any, incentive to reach agreements with their competitors. Unlike those participating in normal commercial negotiations, the ILEC does not face any risk that its potential customer (the requesting carrier) will buy from someone else if its position is too harsh, because there is no one else. If the customer chooses not to buy at all because the price is too high or the service inadequate, the ILEC would benefit from the removal of a potential competitor from its markets.

The only factors influencing the ILEC and the requesting carrier to reach a compromise are the knowledge that, if they do not, a regulator will impose an agreement upon them, and the risk that the arbitrated outcome will be less favorable than a negotiated agreement. Commission rules will provide the parties with better information as to the likely outcome of any arbitration. This

4/ Department of Justice at 25.

information will assist both parties in assessing the risks that they face if they do not reach agreement, and should thereby facilitate agreement.

Finally, minimum federal standards will prevent establishment of a patchwork of individual State standards. If left to the States, potential competitive LECs will have to devote substantial resources solely for monitoring and participating in a myriad of multiple, concurrent State proceedings throughout the country. This task will create a potentially insurmountable economic barrier to local market entry. The Commission has the opportunity now to set minimum standards to facilitate rapid agreements while ensuring that competition is economically viable.

B. Minimum Standards Are Consistent with the States' Role Under Sec. 252

The 1996 Act indisputably made significant changes in the relationship between Federal and State regulators in the field of telecommunications. Section 251 establishes substantive duties that apply to various classes of telecommunications carriers without respect to traditional jurisdictional dividing lines, and directs this Commission to adopt regulations implementing these duties. Section 252, on the other hand, assigns the State commissions a key role in arbitration and approval of negotiated agreements pursuant to Sec. 251, again without regard to traditional notions of jurisdictional separation. It is to be expected that this new statutory scheme has generated some friction between this Commission and its State counterparts concerning their respective roles and responsibilities in carrying out the new provisions. Nonetheless, the statutory language makes it clear that Congress intended this Commission to establish national standards that will be universally applied by the States. Not only does Sec. 251(d)(1) explicitly direct the Commission to prescribe regulations to implement the provisions of Sec. 251, but Sec. 261(c) even more broadly provides that any "requirements" imposed by a State on a telecommunications carrier after the effective date of the 1996 Act must not be "inconsistent with this part [II of Title II] or the Commission's regulations to implement this part." It is therefore clear that, while the States have been assigned considerable authority with respect to review of interconnection and access arrangements, they must exercise that authority within the boundaries established by this Commission's national regulations.

As GST outlines in its initial Comments, the Commission can fulfill its duties under Sec. 251 without impairing the States' prerogatives by establishing minimum standards that each ILEC must meet in order to comply with its duties under subsections (b) and (c).[5/] Many of the State regulators endorse this approach in their comments.[6/] Although some States express concern that the Commission's implementing regulations may conflict with the regulations or statutes they have already adopted to implement local exchange competition,[7/] it is noteworthy that none of the States point to any material conflict between the approaches set forth in the *NPRM* and a particular State's existing regulations. To the contrary, most States acknowledge that, for States which have already acted to establish local exchange competition, the existing State regulatory frameworks are largely

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5/ GST at 3.

6/ *See* Florida PSC at 2; Kansas Corporation Comm'n at 2-4; *see also* Ohio Office of Consumers' Counsel at 2-5.

7/ Iowa Utilities Board at 3-4; PUC of Ohio at 3, 7, 16.

consistent with the 1996 Act and with the Commission's tentative approach to implementing that Act.[8]

There can be no doubt that the FCC's implementing regulations will require fine tuning over time as experience enlightens the new regulatory process. The biennial review of regulations adopted under the 1996 Act will account for this experience.[9] However, these issues do not in any way detract from the need to adopt clear and concise uniform implementing regulations in the first instance. Indeed, it takes little imagination to envision the chaos that could ensue if all 50 States undertook to implement their own "bottoms up" regulations without the unifying guidance Congress intended this Commission to provide.

II. LRIC IS AN EFFICIENT, CONVENIENT, AUTHORIZED PRICING METHOD FOR INTERCONNECTION, ACCESS TO UNBUNDLED NETWORK ELEMENTS AND COLLOCATION (¶¶ 123-133)

A major point of controversy in the comments revolved around the desirability of using long run incremental costs ("LRIC") or total service long run incremental costs ("TSLRIC") to set prices for interconnection, access to unbundled network elements and collocation. Generally, commenters support reliance upon negotiations to determine the appropriate prices for interconnection and interconnection related offerings. However, the commenters were deeply split on whether LRIC should be used to set prices. As GST states in its initial comments, the 1996 Act requires that interconnection rates be set at LRIC for an *efficient* carrier, without reference to "historic,"

[8] *See* NARUC at 8.

[9] *See* 47 U.S.C. § 161(a).

"embedded," or "legacy" costs.[10] This method fairly compensates ILECs, may include a reasonable profit, and is constitutional.

A. LRIC-Based Prices Emulate A Competitive Market

Several parties support the use of LRIC as the standard for setting prices for interconnection, access to unbundled network elements and collocation.[11] The Department of Justice argues that LRIC-based pricing was "necessary to effect the Act's primary goal of securing effective and efficient competition."[12] It also argues that LRIC-based prices for interconnection, access to unbundled network elements and collocation would minimize the opportunities of ILECs to engage in anticompetitive behaviors. The Department of Justice writes that "by misallocating costs from competitive activities to activities that supply 'captive' customers, the ILECs can raise the price of network elements to the captive customer, and escape having to recover those costs from the competitive activities."[13] Pricing based on LRIC reduces that competitive problem and other price squeezes by the providers of essential services.[14]

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[10] GST at 26-29.

[11] *See, e.g.*, ALTS at 35-37 and Page Montgomery Affidavit; AT&T at 46-54; Cable and Wireless at 32-36; Department of Justice at 28-32; Intermedia Communications Inc. at 25; National Cable Television Association at 49-50 and Attachment "Unbundling and Interconnection and Traffic Exchange" at 4-24; Sprint Comments at 48-49; TCI at 26-27.

[12] Department of Justice at 32.

[13] *Id.* at 30-31.

[14] *See also*, AT&T at 48-49.

The overarching legislative intent of the Telecommunications Act was "to provide for a procompetitive, de-regulatory national policy framework designed rapidly to accelerate private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[15/] As Professors Baumol, Ordover and Willig argue, the framework of the Telecommunications Act should be interpreted to emulate the mechanisms by which prices are determined in a competitive environment.[16/] In a competitive market, buyers and sellers generally negotiate mutually agreeable prices, terms and conditions, just as the Telecommunications Act directs interconnectors to negotiate interconnection agreements. Broadly speaking, under Sec. 252 of the Telecommunications Act, state regulators are called on to establish prices only when the negotiation process fails and to generally evaluate the prices that result from the negotiation process.

LRIC provides a standard for prices that emulates a competitive market. In a competitive market, prices equilibrate at incremental costs. As GTE's economist, Edward Beauvais, states in his affidavit, "Economic theory is absolutely clear that the relevant costs to look at in making pricing decisions are incremental costs."[17/] As Professors Baumol, Willig and Ordover write:

15/ Joint Explanatory Statement of the Committee of Conference, at 1 (Jan. 31, 1996).

16/ AT&T Comments, Affidavit of William Baumol, Janusz Ordover and Robert Willig at 2. "Where, as here, markets are ineffectively competitive and regulatory oversight is warranted, regulators should set prices that replicate, as closely as possible, the prices that would prevail in competitive markets."

17/ GTE Comments, Affidavit of Dr. Edward Beauvais at 2.

> The measure of costs on which efficient prices are based, and to which efficient prices converge in competitive markets, is *incremental* costs. Incremental cost represents the *additional* cost to society of producing a particular network element or service, rather than the most valuable alternative use or uses, if all other outputs of the ILEC are held constant.
>
> Use of incremental cost pricing will best approximate the performance of competitive markets. In the long run, prices in competitive markets converge to incremental costs. Firms decide whether to expand or enter new markets by comparing the expected costs of expansion or entry with the expected incremental revenue. Likewise, firms decide whether to contract or exit by comparing the costs avoided with the expected revenues foregone.[18]

Even in a multi-product product market, incremental costs are the relevant costs for pricing decisions. For example, if a cable television company wishes to use its network to provide telephone service, it will do so only if the price it can charge for telephone service is greater than the additional, incremental costs associated with upgrading its cable television network to provide telephone service.

Opponents to using LRIC costs as the basis for prices for interconnection, access to unbundled network elements or collocation have a myriad of complaints about LRIC-based prices but nothing concrete to offer. Indeed, the ILECs appear to forget that the 1996 Act mandates that pricing be based on cost and may include a reasonable profit.[19] Some ILEC positions are simply internally illogical. NYNEX, for example, argues that actual, accounting costs, drawn from the Commission's Part 32 costing rules, should be the basis to establish the costs used for setting

[18] AT&T Comments, Affidavit of William Baumol, Janusz Ordover and Robert Willig at 4-5.

[19] 47 U.S.C. § 252(d)(1).

interconnection and unbundled network element rates.[20] Two pages later in its comments, NYNEX argues that the Commission should not use existing access charges to set the bounds of interconnection charges because those rates were the product of the Commission's Part 36 and 69 rules, which are fundamentally not cost based.[21] Obviously, NYNEX seeks to use the Commission rules (specifically, Part 32 rules) when it benefits NYNEX, but reject them (Parts 36 and 69) when the application does not support NYNEX's economic interests.

B. LRIC-Based Prices and Collocation Are Not Unconstitutionally Confiscatory

Some ILECs assert that interconnection and unbundling prices set at LRIC-based competitive levels would run afoul of the Fifth Amendment as an unconstitutional taking, particularly if these prices do not allow for "historic," "embedded," or "legacy" costs.[22] Proponents of this takings theory typically cite old utility cases for the notion that rates must be sufficient to generate revenues to cover operating expenses and the capital costs of doing business. Indeed, revenue requirements consisting of operating costs plus a reasonable return on the assets a firm has devoted to public use (*i.e.*, a firm's rate base) were the product of the early utility cases that the ILECs now cite. The 1996

20/ NYNEX at 55-56.

21/ NYNEX at 58.

22/ *See, e.g.*, Bell Atlantic at 36-38; Cincinnati Bell at 30; GTE at 65-71; Pacific Telesis at 65-67; US West at 25-28; USTA at 44-46.

Act, by contrast, requires that prices be determined without reference to rates.[23] The takings theory the ILECs now cite is inapplicable and without merit.

1. ILECs Misperceive That LRIC-Based Prices Would Apply To All Prices

The ILECs' objection to LRIC-based prices assumes that the Commission calculates LRIC and requires that all prices be set at that level. Interconnection and access to unbundled network elements basically are new offerings, and prices set at LRIC would, by definition, be sufficient to cover the additional or incremental costs of these new offerings. Thus, pricing these new offerings at LRIC would not deprive the ILECs of a reasonable opportunity to cover their total costs and earn a profit. As Pacific Telesis notes in its comments, "the sum of the carrier's rates must enable it to recover its total costs"[24] in order to avoid an unconstitutional taking.

2. LRIC-Based Prices Are Not Unjust Compensation

Some of those who advanced a takings argument confused common carrier obligations with an unconstitutional taking. GTE argues that interconnection and resale of unbundled network elements are basically forced occupation of its property "essentially no different from requiring a railroad to carry certain cargos or cars, or a trucker to carry a particular load."[25] There is simply no doubt, however, that compelled interconnection of a monopoly public utility to other public

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[23] 47 U.S.C. § 252(d)(1)(A)(i).

[24] Pacific Telesis at 66.

[25] GTE at 67.

utilities is permissible.[26] GTE also argues that LRIC-based prices for interconnection, access to unbundled network elements and collocation interfered with its investment expectations and that the Commission is obligated to evaluate whether LRIC-based prices provide a fair return on interconnection services standing alone.[27] If GTE's arguments are correct (and they are not), then common carrier obligations to serve the public and provide service to all on a non-discriminatory basis would be a taking. Railroads and truckers, as common carriers, always have been required to carry the loads specified by their tariffs. Carriers are in the business of serving customers. Competitive LECs are ILEC customers when their traffic transits an ILEC network. GST and similar carriers simply request that they pay only cost-based LRIC rates for interconnection, access to unbundled elements and collocation. They do not expect that ILECs go unjustly compensated, and the 1996 Act prohibits such below cost pricing. It is the ILECs' own business planning and not the Constitution which should determine how ILECs meet the demand for their services. The reality the ILECs face is that the Constitution does not require that they make a profit *on every customer.*

GTE's suggestion that interconnection and unbundling prices must provide a fair return on a stand alone basis also flies in the face of historical telecommunications pricing practices. Many ILECs (including GTE) assert that local residential service is residually priced below costs and that there is a need to subsidize such offerings. If GTE's takings theory were true, such below cost

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26/ *See, e.g., Otter Tail Power Co. v. United States*, 410 U.S. 366, 375 (1973) (Federal Power Commission may require interconnection for purpose of transmitting wholesale electricity); *Chicago, Milwaukee, & St. Paul Ry. v. Iowa*, 233 U.S. 334, 344-45 (1914) (upholding requirement that railroad transport loaded cars owned by competing carriers).

27/ GTE at 68-71.

pricing for stand-alone residential telephone service would be an unlawful, unconstitutional taking. That simply is not the case.

3. ILECs Are Justly Compensated For Collocation

A few commenters assert that the collocation ordered by the 1996 Act was an unconstitutional taking.[28] The Fifth Amendment provides: "[N]or shall private property be taken for public use, without just compensation."[29] Takings cases generally fall into two distinct patterns. In the first, the government authorizes a physical occupation of property (or takes title). In such a case, at least for *permanent physical invasions*, the Takings Clause requires compensation.[30] In the second, the government merely regulates the use of property. Whether and how much compensation is required to compensate for the regulated use is subject to a fact-specific inquiry.[31] Inasmuch as the 1996 Act requires cost-based pricing which may include a reasonable profit, there simply is no constitutional concern regarding compensation. Since LRIC pricing is at or above cost, no fact-specific inquiry is necessary. Moreover, the cases cited by those alleging unjust competition are inapposite in that they do not concern regulations imposed by a regulatory agency on a public utility that the agency was authorized to regulate in furtherance of the statutory scheme.

28/ ALLTEL at 9; GTE at 66-68; U S West at 32.

29/ *See Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441, 1445 (D.C. Cir. 1994) ("[o]f course, the Clause prohibits only uncompensated takings").

30/ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992); *Yee v. City of Escondido*, 503 U.S. 519, 522 (1992); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982).

31/ *Yee*, 503 U.S. at 522-23.

III. BILL AND KEEP SHOULD BE MANDATED ON AN INTERIM BASIS WHERE PARTIES CANNOT AGREE ON A SYMMETRICAL RECIPROCAL COMPENSATION RATE (¶¶ 235-43)

A. Interim Bill and Keep Will Ensure Rapid Local Competition

In its initial comments, GST argues that the Commission should adopt bill and keep and as an interim cost recovery structure until LRIC-based pricing is instituted.[32] For several reasons, the Commission should reject the ILECs' arguments that neither the Commission nor the States may order bill and keep unless both parties mutually agree to such an arrangement.[33] First, it was not necessary for Congress to enact Sec. 252(d)(2)(B)(i) to authorize States to approve bill and keep arrangements in voluntarily negotiated agreements. Instead, this section was clearly intended to authorize States to mandate bill and keep when they are called upon to resolve reciprocal compensation issues in arbitration proceedings.[34]

Second, as the Commission observed in the *NPRM*, a number of States already have ordered incumbent LECs to implement bill and keep arrangements at least on an interim basis. Under the incumbent LECs' interpretation of the Act, these orders would not be enforceable without their consent and the Commission must not sanction this challenge to state law. Section 251(d)(3) of the Act, however, prohibits the Commission from precluding the enforcement of any State regulation,

[32] GST at 33-35.

[33] *See, e.g.,* NYNEX at 89; Bell Atlantic at 41; BellSouth at 73; U S West at 70-71; TDS Telecommunications at 23-24; Pacific Telesis at 95; Cincinnati Bell at 37; Minnesota Independent Coalition at 38; Washington Independent Telephone Association at 3-4.

[34] *See, e.g.,* Jones Intercable at 27-30; National Cable Television Assn. at 55.

order or policy that is consistent with the Act. Because the Act expressly authorizes bill and keep arrangements, the Commission cannot restrict the States' ability to mandate their use.

Finally, many existing agreements between incumbent non-competing LECs incorporate bill and keep arrangements for the exchange of traffic. As noted above, Sec. 252(i) requires that the terms and conditions of such agreements be made available to requesting carriers on a nondiscriminatory basis. Through the enforcement of Sec. 252(i), both the Commission and the States can mandate that incumbent LECs make bill and keep arrangements available to their competitors.

Consistent with the positions advocated by numerous parties, the Commission should mandate the use of bill and keep on an interim basis where negotiating carriers cannot agree to another arrangement. This has been supported by a number of commenters.[35/] During the interim period, the States can gather the necessary data to determine whether traffic flows are in balance and to make a "reasonable approximation of the additional costs of terminating" calls. In the meantime, entry will not be delayed while carriers litigate these issues in arbitration proceedings.

[35/] *See, e.g.*, Department of Justice at 33-34; Ohio Office of Consumers Counsel at 46; Vanguard Cellular at 32; Competitive Policy Institute at 22-23; American Communications Services at 25; Telecommunications Resellers Assn. at 54; TCI at 34-36; Massachusetts Attorney General at 14; Jones Intercable at 27-30; Sprint Spectrum and American Personal Communications at 10-11; Time Warner at 96; Sprint Corporation at 85-87; National Cable Television Assn. at 54-55; AT&T at 69.

B. Reciprocal Compensation Rates Must Be Symmetrical

While certain incumbent LECs argue that they should be permitted to charge a higher rate for terminating a new entrant's traffic than the new entrant charges them,[36] the majority of commenters agree that reciprocal compensation rates should be symmetrical.[37] As the Massachusetts and Alabama commissions recognize, condoning the use of non-symmetrical rates creates the potential for the incumbent LECs to use their superior bargaining position to exploit new entrants.

The parties who object to symmetrical rates contend that Sec. 252(d)(2) provides that each carrier is entitled to recover its own costs and a uniform rate would not reflect the differences in carriers' cost structures. Contrary to this interpretation, Sec. 252(d)(2) clearly states that reciprocal compensation rates should be determined on the basis of a "reasonable approximation" of the additional costs of terminating a call. Consistent with the suggestion made by NYNEX and others, the ILEC's costs may be used as a reasonable approximation of both carriers' costs to terminate calls and may serve as the basis for determining the reciprocal compensation rate. This approach not only would satisfy the concerns of the incumbents who contend that their call termination costs are higher than a new entrant's, but also would avoid penalizing new entrants for having more efficient operations.

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[36] *See, e.g.,* Bell Atlantic at 43-44; BellSouth at 73; Michigan Exchange Carriers Assn. at 67; ALLTEL Telephone Services Corporation at 15; TDS Telecommunications Corporation at 23.

[37] *See, e.g.,* NYNEX at 88; Massachusetts DPU at 13; Alabama PSC at 32; American Communications Services at 26; AT&T at 69.

IV. CONCLUSION

The initial round of comments illustrate that the Commission must make careful policy choices -- with far reaching implications -- in a limited period of time. The 1996 Act has created an historic opportunity for the development of effective local exchange competition in America. Congress' competitive goals will not be achieved while ILECs continue to exercise monopoly control over essential bottleneck facilities. Minimum federal standards will guarantee ILEC participation in the statutory process of implementing local competition, and LRIC-based rates will ensure that local competition truly is viable.

Respectfully submitted,

Eric J. Branfman
Morton J. Posner
SWIDLER & BERLIN, Chtd.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Tel.)
(202) 424-7645 (Fax)

Attorneys for GST Telecom, Inc.

Kenneth E. Snow
Director, Regulatory Affairs
GST Telecom, Inc.
3478 Buskirk Avenue
Pleasant Hill, CA 94523

Dated: May 30, 1996

161259.1

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May 1996, copies of the foregoing REPLY COMMENTS OF GST TELECOM, INC., CC Docket No. 96-98, were sent via via First-Class Mail, U.S. postage prepaid, to the parties on the attached service list.

Alma R. Myers

Alma R. Myers

SERVICE LIST

1. **360° Communications Company**
Kevin C. Gallagher, Sr. Vice President
-- General Counsel and Secretary
8725 West Higgins Road
Chicago, IL 60631

2. **Ad Hoc Coalition of Corporate Telecommunications Managers**
Rodney L. Joyce
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Washington, DC 20036

3. **Ad Hoc Telecommunications Users Committee**
Laura F. H. McDonald
Levine, Blaszak, Block & Boothby
1300 Connecticut Ave., NW, Suite 500
Washington, DC 20036-1703

4. **AirTouch Communications, Inc.**
David A. Gross
Kathleen Q. Abernathy
1818 N Street, N.W., Suite 800
Washington, DC 20036

   Pamela Riley
AirTouch Communications, Inc.
One California Street
San Francisco, CA 94111

5. **Alabama Public Service Commission**
Mary E. Newmeyer
John Garner
100 N. Union Street
P.O. Box 991
Montgomery, AL 36101

6. **Alaska Public Utilities Commission**
Don Schröer
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

7. **Alliance for Public Technology**
Dr. Barbara O'Connor, Chairwoman
Mary Gardiner Jones, Policy Chair
901 15th Street, Suite 230
Washington, DC 20005

8. **ALLTEL Telephone Services Corporation**
Carolyn C. Hill
655 15th Street, N.W., Suite 220
Washington, DC 20005

9. **American Communications Services, Inc.**
Brad E. Mutschelknaus
Steve A. Augustino
Marieann K. Zochowski
Kelley Drye & Warren
1200 19th Street, NW, Suite 500
Washington, DC 20036

10. **American Mobile Telecommunications Association, Inc.**
Alan R. Shark, President
1150 18th Street, NW, Suite 250
Washington, DC 20036

11. **American Network Exchange, Inc. and U.S. Long Distance, Inc.**
Danny E. Adams
Steven A. Augustino
Kelley, Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036

12. **American Personal Communcations**
Anne P. Schelle, Vice President
External Affairs
One Democracy Center
6901 Rockledge Drive, Suite 600
Bethesda, MD 20817

Jonathan D. Blake
Kurt A. Wimmer
Gerard J. Waldron
Donna M. Epps
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

13. **American Public Communications Council**
Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro & Morin, LLP
2101 L Street, NW
Washington, DC 20037-1526

14. **American Public Power Association**
James Baller
Lana Meller
The Baller Law Group
1820 Jefferson Place, NW, Suite 200
Washington, DC 20036

15. **Ameritech**
Antoinette Cook Bush
Linda G. Morrison
Skadden, Arps, Slate, Meagher & Flom
1440 New York Ave., NW
Washington, DC 20005

16. **Anchorage Telephone Utility**
Paul J. Berman
Alane C. Weixel
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

17. **Arch Communications Group, Inc.**
Carl W. Northrop
Christine M. Crowe
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, N.W., 10th Floor
Washington, DC 20004

18. **Association for the Study of Afro-American Life and History, Inc. (ASALH)**
Bettye Gardner
1407 Fourteenth Street, NW
Washington, DC 20005-3704

19. **Association for Local Telecommunications Services**
Richard J. Metzger
Emily M. Williams
1200 19th Street, NW, Suite 560
Washington, DC 20036

20. **AT&T Corporation**
Mark C. Rosenblum
Roy E. Hoffinger
Stephen C. Garavito
Richard H. Rubin
295 North Maple Avenue
Room 3245I1
Basking Ridge, NJ 07920

21. **Bay Springs Telephone Co., Inc.,; Crockett Telephone Co.; National Telephone Company of Alabama; Peoples Telephone Company; Roanoke Telephone Company; and West Tennessee Telephone Company**
James U. Troup
L. Charles Keller
Arter & Hadden
1801 K Street, N.W., Suite 400 K
Washington, DC 20006

22. **Black Data Processors Association (BDPA)**
Earl Pace, Chairman, Legislative Committee
1250 Connecticut Avenue, NW, Ste. 610
Washington, DC 20036